IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 17741 of 2005(K)

OS.2163/1997 of PRL.M.C.,TRIVANDRUM

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PETITIONER:

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1. G. RAMESHAN, `SUMTHRUPTHI',
   RAJADHANI BUILDINGS, THIRUVANANTHAPURAM.

2. C.P. ABHILASH @ RAMESH,
   RESIDING AT `SUMTHRUPTHI', EAST FORT,
   THIRUVANANTHAPURAM.

BY ADV. SRI.VPK.PANICKER

RESPONDENTS:

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1. R. SUMATHI, KAUSTHUBHAM,
   T.C.27/856, ATTANI LANE, VANCHIYOOR,
   THIRUVANANTHAPURAM.

2. G. RAJU, KARTHIKA, KALLUMMOODU,
   ANAYARA, THIRUVANANTHAPURAM.

3. R. SUDHA, BHADRA, T.C.30/340,
   KALLUMMOODU, ANAYARA, THIRUVANANTHAPURAM.

4. DR. K. LALITHA KUMARI, D/O. KARTHIYAYANI
   GOKUL MOSQUE LANE, KUMARAPURAM,
   MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA
SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE PLAINT IN O.S.2163/1997 BEFORE THE IST ADDITIONAL MUNSIFF'S COURT,THIRUVANAN-THAPURAM.

EXT.P2 TRUE COPY OF THE COMMISSION REPORT DTD.27.11.1997 IN O.S.NO.2163/1997.

EXT.P3 TRUE COPY OF THE PLAINT IN o.s.1839/2000 BEFORE THE MUNSIFF'S COURT, THIRUVANANTHAPUAM.

EXT.P4 TRUE COPY OF THE ORDER IN I.A.9151/2000 IN O.S.NO. 1839/2000 OF MUNSIFF'S COURT, THIRUVANANTHAPURAM.

EXT.P5 TRUE COPY OF I.A.2485/2005 IN O.S.2163/1997 OF MUNSIFF'S COURT, THIRUVANANTHAPURAM.

EXT.P6 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS TO I.A.2485/2005 IN O.S.2163/1997 OF MUNSIFF'S COURT, THIRUVANANTHAPURAM.

EXT.P7 TRUE COPY OF THE RODER DTD.4.4.2005 IN I.A.2485/2005 IN O.S.2163/1997 OF MUNSIFF'S COURT,THIRUVANANTHAPURAM.

TRUE COPY

P.A.TO JUDGE

css/

PIUS C. KURIAKOSE, J.

W.P.(C) No. 17741 OF 2005

Dated this the 18th day of June, 2007

JUDGMENT

This writ petition is remaining defective on the reason that the 4th respondent who was the additional 4th respondent in the court below has not been served. But as can be seen from the impugned order the the 4th respondent was sailing along with the other defendants. According to me in the nature of this case wherein an order dismissing the application for amendment of the plaint is dismissed, the other respondents can take care of the interest of the 4th respondent also. It is declared that service is complete.

2. Ext.P7 order allowing the application for amendment so as to incorporate substantial reliefs of declaration of title, mandatory injunction and recovery possession (as an alternative relief) in a suit which was originally filed is under challenge in this proceedings under Article 227 initiated by the defendant. Mr.V.P.K.Panicker, counsel for the petitioner submits that the effect of Ext.P7 will be to enable the respondent-plaintiff to get over the bar of limitation which has already set in as against the reliefs sought to be incorporated under the amendment application. Mr.R.S.Kalkuara would remind me of the contours of this Court's jurisdiction under Article 227 which according to the learned counsel is

visitorial in nature and will not be exercised unless the order can be branded as wholly unreasonable or vitiated any clear violation of law statutory or settled.

Having considered the rival submissions made at the Bar and also the judgment of the Supreme Court cited at the Bar, I am of the view that the learned Judge was justified in allowing the amendment application. But an opportunity should have been given to the petitioners for filing additional written statement in the suit contending that the relief sought to be incorporated are barred by limitation. Accordingly, following the judgment of the Supreme Court, I confirm Ext.P7 making it clear that it is open to the petitioner to contend through the written statement that the reliefs are bared and that the amendment will not have the effect of enabling the petitioner to get over the bar of limitation. The court will try the issue as to whether the suit is barred by limitation and also as to when the amendment will come into effect as issues in the suit and try those issues along with other issues.

PIUS C. KURIAKOSE, JUDGE

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